Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From October 1, 1962

Through December 30, 1962

VOLUME 109

MACDONALD GALLION, Attorney General

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QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1962 through December 30, 1962 is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superinendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MACDONALD GALLION

Attorney General

MACDONALD GALLION

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OPINIONS

October 4, 1962

Honorable John A. Sankey
Judge of Probate
Montgomery County
Montgomery, Alabama

Elections — Voting Machines — Ballots.

Under the provisions of Act No. 154 of the 1961 Special Session of the Legislature, paper ballots should be used in the Congressional race to be held in November, 1962.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of October 1, 1962, is as follows:

"Act No. 154, approved September 15, 1961, and passed by the 1961 Special Session of the Legislature provides in Section 3 as follows:

" 'Section 3. At the general election in November 1962, and every two years thereafter until the state is redivided into congressional districts, the representatives in Congress shall be elected at large by the qualified electors of the whole state, provided that every elector who votes in such election must vote for eight and only eight candidates for representatives in Congress.'

"The provision to vote for eight, and only eight, candidates for representatives in Congress has just been sustained by the Supreme Court of Alabama.

"It is mechanically impossible to set the voting machines in Montgomery County so that a vote would not register if less than eight candidates for Congress was voted on. This is also true of many other counties using voting machines.

"We are now requesting your opinion as to whether we can use paper ballots for the office of Representatives to Congress at the General Election, and to instruct the officials to tabulate the ballots the same as we did at the Primary on May 29.

"Your prompt opinion will be appreciated."

My answer to your inquiry is in the affirmative.

The Supreme Court of this State has twice considered the constitutionality and other aspects of Act No. 154 of the 1961 Special Session of the Legislature.

In the first case considered by the Court, **Jansen v. State,** 137 So. 2d 47, the Court upheld the constitutionality of the Act. In this case, the Court recognized the fact that all of the details of the elections called thereunder were not spelled out in the Act, specifically pointing out that any details of the elections could and must be worked out by the Attorney General upon request of the county officials.

In the second case considered by the Court, **White v. Frink,** Secretary of State, Sankey, Judge of Probate, Third Division No. 231 (Ms.), the Court paid particular attention to Section 3 of the Act holding that under the provisions thereof each voter must vote for eight and only eight candidates for Congress, and any ballots cast for a lesser number than eight would be a void ballot, and should not be counted by the election officials.

I have made inquiry of persons well versed in the mechanical operation of voting machines, and they concur with the statement contained in your request, that it is mechanically impossible to set a voting machine, of the type used in Alabama, so that a vote would not register if less than eight candidates for Congress was voted for.

Being mindful of the mandate handed down by the Supreme Court to the Attorney General to work out details of the elections called under Act No. 154, supra, and the further holding that voters voting at the election, must vote for eight and only eight candidates, I must resort to some other method of casting ballots, other than voting machines, to comply with this mandate. Therefore, since voting machines, because of their mechanical structure, will register the vote of a voter who cast his vote for fewer than eight candidates for Congress, they cannot be used, and comply with the opinion of the Court. The only reasonable conclusion for me to reach is that paper ballots must be used in the Congressional election to be held in November, 1962. To hold otherwise would do violence to the opinion of the Supreme Court in the case of **White v. Frink, et al.**

This opinion will, of course, not affect the use of paper ballots in the counties which ordinarily use paper ballots. Its only effect is, that in those counties in which voting machines are used, paper ballots should be used in the Congressional race. In voting machine counties, the machines should be used to tabulate the other races. The ballots in voting machine counties in the race for Congress may be handled and tabulated in the same manner outlined by this office in an opinion addressed to you in regard to the May 29th Primary.

Yours very truly,

MACDONALD GALLION
Attorney General

October 16, 1962

Honorable Estes R Flynt
Judge of Probate
Lauderdale County
Florence, Alabama

Game and Fish — Licenses

Persons, firms, associations or corporations licensed as wholesale fresh-water fish dealers are not required to purchase such additional licenses for every employee of such persons, firms, associations or corporations.

Opinion by Assistant Attorney General O'Rear.

Dear Sir:

Your request for an official opinion bearing date of October 9, 1962, is as follows:

"I would appreciate a clarification of the regulations pertaining to Wholesale Fresh Water Fish Dealer license as set out in Sec. 12, Act No. 784 of the 1953 Legislature, as approved September 19, 1953.

"On September 29, 1961, Mr. F. D. Rice of Covington, Tennessee purchased a Wholesale Fresh Water Fish Dealers License in this office as is his custom since he has been coming into Alabama for several years to buy non-game fish from fish dealers in Alabama. Some time during the summer Mr. Rice, due to illness, sent an employee into Alabama to buy fish in his stead. The driver of Mr. Rice's truck was stopped in Colbert County, cited for operating without a Wholesale Fresh Water Fish Dealers license, and made buy such a license in Colbert County, Alabama.

"My question is as follows:

"If a licensee, being properly licensed as a Wholesale Fresh Water Fish Dealer, has more than one truck in operation in his business, does he have to purchase a Wholesale Fresh Water Fish Dealers License for each employee operating each truck under Sec. 12, Act 784, 1953 Legislature?"

It is not necessary that a firm, association or corporation purchase a wholesale fresh-water fish dealer license for every employee of the firm, association or corporation, as the case may be.

Your attention is directed to the provisions of Section 12 of Act No. 784, 1953 General Acts of Alabama, page 1069, which I quote as follows:

> "Every person, firm, association or corporation engaged in the buying, selling or handling of fresh water non-game fish for the purpose of resale, whether handled on a commission basis or otherwise, and every person, firm, association or corporation shipping fresh water non-game fish out of the State of Alabama on consignment or order shall be considered a wholesale dealer of fresh water non-game fish, and he or it shall be required to pay a license in the sum of twenty-five dollars per annum. Any person, firm, association or corporation handling fresh water non-game, uncooked fish strictly at retail to the consumer shall be considered a retailer and must purchase a license and pay the sum of ten dollars per annum for same. The revenue to be derived from such licenses shall be covered into the State Treasury to the credit of the Game and Fish Fund of the Department of Conservation. Wholesale and retail licenses as herein prescribed shall be issued in the same manner and under the same provisions as provided for other licenses in this Act."

You will note that Section 12, supra, in enumerating who must purchase a license contains the alternative phrase "he or it." The word "it" pertains to a firm, association or corporation while "he" pertains to an individual. The intent of the Act is clearly defined by this usage and it could not be interpreted so as to mean that a licensee person, firm, association or corporation must purchase a license for each and every employee of the person, firm, association or corporation.

The misunderstanding as to the necessity of a firm, association or corporation purchasing a license for every employee might have come about through the provisions contained in Section 1½ of said Act No. 784, which I quote as follows:

> "It is the intent of this Act that the license provided herein for the taking of commercial or non-game fish from the public impounded waters and navigable streams of the State of Alabama **shall be issued upon an individual basis only and each person engaging in such activities or operations shall be required to purchase said license."** (Emphasis supplied.)

Section 1½, supra, is speaking of a license for the "taking of commercial or non-game fish from public impounded waters" which is a different license from that required for wholesale fresh-water fish dealers, one license being for the taking of non-game fish, the other license being for the buying, selling or handling of non-game fish for the purpose of resale. The license for the taking of non-game fish must be issued on an individual basis but this is not the requirement for the issuing of licenses to engage in the buying, selling or handling of fresh-water non-game fish for the purpose of resale.

You are, therefore, advised that it is my opinion that a licensee person, firm, association or corporation is not required to purchase a wholesale fresh-water fish dealer's license for every employee engaged in such work.

Yours very truly,

MACDONALD GALLION
Attorney General

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